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it must be satisfied that it is the property of the defendant and so a third party is allowed by rule 8 to make a claim, but the order passed under Order XXXVIII does not purport to decide conflicting claims but only the right to attach in the circumstances of the case. It is clear that article 11 of the Limitation Act does not apply because the words "attached in execution of a decree" prevent that. If rule 63 was intended to apply to prior attachments one would expect to find article 11 worded in such a manner as to include these orders. The suit is one to establish the right which he claims and is not one to set aside an order. If a suit in that form is proper where an order has been made under rule 63, as is clearly indicated by the rule itself, I do not see why it is not the proper form of suit in this case and as the article does not bar it, I see no reason to assume that the order must be set aside, or go to article 13 to find a bar.

The Second Appeal is dismissed with costs.

S.V.

APPELLATE CIVIL.

Before Mr. Justice Coutts Trotter and Mr. Justice Seshagiri Ayyar.

1917, February, 6 and 19.

DEVARAPALLI RAMALINGA REDDI AND SEVEN OTHERS (DEFENDANTS NOS. 1 TO 7 AND 12), APPELLANTS,

v.

SRIGIRIRAJU KOTAYYA AND TEN OTHERS (PLAINTIFFS AND DEFENDANTS NOS. 8 TO 11, 13 AND 14), RESPONDENTS.*

Evidence Act (I of 1872), sec. 35—Register of births and deaths kept by village officials—Extract from the register, whether receivable in evidence and whether evidence of the date of death of a person.

A register of births and deaths kept by village officials under the orders of the Board of Revenue is a public document within the meaning of section 35 of the Evidence Act and an entry in such register recording the death of a person is evidence of the actual date of his death.

Ratcliff v. *Ratcliff and Anderson* (1859) 1 Swabey and Tristram, 467 and *In the Estate of Goodrich, Payne* v. *Bennett* (1904) Pr. D., 138, referred to.

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* Appeal No. 71 of 1916.

RAMALINGA REDDI v. KOTAYYA.

APPEAL against the decree of S. RANGANADHA MUDALIYAR, the temporary Subordinate Judge of Guntur, in Original Suit No. 42 of 1914.

The facts material to this report are set out in the judgment.

T. V. Venkatarama Ayyar and *R. Rajagopala Ayyar* for the appellants.

T. Prakasam for the respondents.

COUTTS TROTTER AND *SESHAGIRI AYYAR, JJ.

JUDGMENT.—This is an appeal from a decree in a suit brought by a reversioner to recover possession of the properties belonging to one Pedda Venkatarayudu, the last male owner. His daughter Venkamma was in possession until she died. The first question argued before us related to the date of the death of this woman. The plaintiffs' allegation was that she died on the 9th January, 1902. The twelfth defendant stated that Venkamma died in 1899 and that the suit was barred by limitation. The Subordinate Judge came to the conclusion that the plaintiff's suit was in time. The main argument against this conclusion was that Exhibit A, the public extract of the register of the death of Venkamma, was not receivable in evidence, and that the judgment of the Subordinate Judge which is mainly based on that document should be reversed.

The learned vakil for the appellants broadly contended that this document is not receivable in evidence under section 35 of the Indian Evidence Act. He argued that there is no legislative enactment making it compulsory upon village officers to maintain a register of this kind and that an extract from such a register is not covered by section 35. There are two answers to this contention. In the first place, the Madras Act III of 1899 provides for village officers beyond municipal towns keeping a register of births and deaths. Under section 5, the Collector may appoint any person either by name or by virtue of his office to be Registrar of Births and Deaths in each village. There are provisions in the Act for such registers being sent up to the Taluk cutcherry.

Under section 17, the extracts given in the Taluk office are required to be certified as provided in section 76 of the Indian Evidence Act. Such extracts may be produced in proof of the entries of which they purport to be copies. It is, therefore, clear that the record of death would be an entry made in a public

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register as required by the Evidence Act. It is true that under section 2, the Local Government has to extend the operation of this Act to the districts. On such a notification, section 4 would enable the Collector to proclaim that registration shall be compulsory. As the point has been taken for the first time in appeal and as the appellant denied the existence of any legislative enactment on the subject, the respondent has not been able to ascertain whether the Act has been extended to the district of Guntur and whether the registration has been made compulsory in that district. But even apart from this question, we see no reason for holding that the register would not be covered by the language of section 35 of the Evidence Act. The entry spoken of in the first part of the section must either (*a*) be made by a public servant in the discharge of his official duty, or (*b*) by any other person in the performance of a duty specially enjoined by the law of the country. The second part alone relates to legislative enactments; the first part is general in its terms. A reference to the Standing Order No. 101 of the Board of Revenue shows that the system of registering births and deaths was inaugurated in 1865; by the Board's Proceedings, dated 5th February, 1874, the duty of keeping such registers was cast upon the village officials. It is clear, therefore, that a village karnam or a reddi keeping a register of deaths will be acting as a public servant in the discharge of his official duty. It is not necessary that a public servant should be compellable by legislative enactment to discharge such a duty. In *Ratcliff* v. *Ratcliff and Anderson*(1) it was pointed out that a register of births and deaths kept under the orders of the East India Company was a public document of the description mentioned in section 35 of Evidence Act. Lord CAMPBELL in that judgment speaks of the register having been kept in obedience to directions given by the East India Company in its sovereign capacity. No legislation of the Company is referred to as having authorized the keeping of such a register. We are, therefore, of opinion that even apart from Act III of 1899 the registers which are being kept under the directions of the Board of Revenue since the year 1865 do come under section 35 of the Evidence Act. It need hardly be stated that the Board of Revenue are the agents

(1) (1859) 1 Swabey and Tristram, 467.

of the Executive Government of the Presidency : see *The Secretary of State for India in Council* v. *Kasturi Reddi*(1).

One other argument of the learned vakil for the appellant was that the extract is not evidence of the actual date of the death mentioned in it. Reliance was placed upon certain observations contained in *In re Wintle*(2). It is clear that these observations have not been accepted as good law in England : see *In the Estate of Goodrich, Payne* v. *Bennett*(3). We are, therefore, of opinion that Exhibit A was rightly admitted in evidence, and that it is evidence of the actual date of the death.

Upon the facts, we have no hestitation in concurring with the conclusion of the Subordinate Judge that the plaintiff has proved that Venkamma died within twelve years of the date of suit. The evidence let in on behalf of the defendants is utterly worthless, having regard to the fact that the twelfth defendant who professes to have known the date of the death all along did not state it in the written statement filed by him.

Another contention was that Chinna Venkatarayudu and Pedda Venkatarayudu were not divided ; but the documentary evidence on the question is very clear. Exhibits L, N and Z of the year 1860 show that by that time the two brothers had become divided in status. Then it was suggested that the family compromise evidenced by Exhibit D is binding upon the present plaintiffs. The contest in that case was between the widow of a co-parcener who claimed maintenance from the family and the twelfth defendant's father. The twelfth defendant's father claimed that he was entitled to the whole of the property ; he entered into a compromise. The present plaintiffs were not parties to the compromise and by no stretch of imagination can they be said to have been represented either by Bangaramma or by the twelfth defendant's father. We hold that the compromise is not a family arrangement binding upon the plaintiffs. We must, therefore, for these reasons confirm the decree of the Subordinate Judge and dismiss the appeal with costs. We dismiss the memorandum of objections also with costs.

S.V.

(1) (1903) I.L.R., 26 Mad., 268. (2) (1870) L.R., 9 Eq., 373.
(3) (1904) Pr. D., 138.